

## **Business Insider: No One Is Talking About The Insane Law That Lets Authorities Read Any Email Over 180 Days Old - Jun. 7, 2013**

The revelation that the National Security Agency can monitor your every move online shouldn't come as a total shock. A 1986 law lets the Feds read emails that have been stored on a server for at least six months.

The Electronic Communications Privacy Act was enacted long before everybody had email, but the government says the law lets it access 180-day old email without a warrant. Here's the relevant text of the law:

*A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.*

In May, the ACLU got its hands on the government's justification for using this law to gather six-month-old emails. Here's the justification from the 2012 Version of FBI Domestic Investigations and Operations Guide, which the ACLU got through a FOIA request:

In enacting the ECPA, Congress concluded that customers may not retain a "reasonable expectation of privacy" in information sent to network providers. . . **[I]f the contents of an unopened message are kept beyond six months or stored on behalf of the customer after the e-mail has been received or opened, it should be treated the same as a business record in the hands of a third party, such as an accountant or attorney.** In that case, the government may subpoena the records from the third party without running afoul of either the Fourth or Fifth Amendment.

The Fourth Amendment protects Americans from unreasonable searches and often requires police to get search warrants before encroaching on your privacy. Americans should be appalled that the government can snoop into their old emails without such a warrant.

President Obama said today that "nobody's listening to the content of people's phone calls." However, the Feds might be reading a very private six-month-old email — and they don't even need permission from a judge to do so.

There is a bright spot, though. In May, Eric Holder testified that he thinks the government should have to get a warrant before it accesses any email regardless of its age.

The Justice Department submitted this statement to Congress in March:

Many have noted and we agree that some of the lines drawn by the SCA that may have made sense in the past have failed to keep up with the development of technology, and the ways in which individuals and companies use, and increasingly rely on, electronic and stored communications. We agree, for example, that there is no principled basis to treat email less than 180 days old differently than email more than 180 days old.